

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Case No. _____

**SAGEBRUSH CELLULAR, INC. APPLICATION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER AND
PETITION FOR REDEFINITION OF SERVICE AREAS OF RURAL TELEPHONE
COMPANIES**

I. Introduction

1. Sagebrush Cellular, Inc. ("Sagebrush") is a Montana based telecommunications provider. Sagebrush is a wholly owned subsidiary of Nemont Telephone Cooperative, Inc. ("Nemont"), a telecommunications company providing services in Montana and North Dakota. Sagebrush offers wireless services in Montana and North Dakota. With this application and supporting documents, Sagebrush seeks an order from the Commission to be designated as an eligible telecommunications carrier pursuant §§ 69-09-05-12, 69-09-05-12.1 of the North Dakota Administrative Code, N.D. Cent. Code § 49-21.01.7 (12), and § 214 (e) of the federal Telecommunications Act of 1996 ("Act").

2. Under the analysis of § 214(e) of the Act and Montana's rules for designation of ETCs, Sagebrush was designated an ETC by the Montana Public Service Commission by order dated November 29, 2005. *See Order No. 6687(a)* attached hereto as Exhibit 1. Sagebrush herewith seeks a similar order from the North Dakota Public Service Commission ("Commission") for its licensed spectrum in North Dakota for the purpose of qualifying to obtain federal universal service support. The North Dakota area, which is within Sagebrush's authorized serving area of BTA 299 and BTA 476 is illustrated in Exhibit 2 of this Application.

N.D. Cent. Code § 49-21.01.7 (12).

3. Section 214(e) of the federal Telecommunications Act of 1996 ("Act"), the rules and regulations of the Federal Communications Commission ("FCC"), specifically 47 C.F.R. § 54.101(a), §§ 69-09-05-12, 69-09-05-12.1 of the North Dakota Administrative Code, and N.D. Cent. Code § 49-21-01.8 establish the mandatory and exclusive criteria for designation of the federal ETC in North Dakota. This Application affirms and demonstrates that Sagebrush meets all applicable requirements to be designated an ETC in the licensed territory within North Dakota.

4. Sagebrush requests ETC designation in two study areas. First, Sagebrush requests ETC designation for the NEMONT TEL COOP-ND study area, designated by USAC numerically as 382247. Second, as indicated in Table 1, Sagebrush requests conditional ETC designation under 47 C.F.R. § 54.207(c) for the study area of a portion of Northwest Communications Cooperative's study area ("NCC"). Sagebrush's request is conditioned on the Commission redefining the study area on a wire center basis in the relevant portion of NCC's study area. Sagebrush asks the Commission to conditionally designate Sagebrush as an ETC in those newly redefined study areas, subject to approval of the redefinition by the FCC under 47 C.F.R. § 54.207(c).

5. This request is equivalent to the applications submitted to the Commission on October 15, 2003, by North Central RSA 2 of North Dakota Limited Partnership d/b/a Verizon Wireless Petition for Designation as an ETC, PU-386-03-598; and by Northwest Dakota Cellular d/b/a Verizon Wireless Petition for Designation as an ETC, PU-1226-03-597, and by North Dakota Network Company for designation as an ETC and redefinition of study areas, PU-05-653. Those applications requested that the Commission redefine certain study areas in North Central RSA 2 and Northwest Dakota Cellular, and in regions of northwest North Dakota. On

February 25, 2004, the Commission designated North Central RSA 2 and Northwest Dakota Cellular federal ETC status subject to the FCC's approval of the redefinition decision. A Petition was filed with the FCC on June 2, 2004, and the FCC released a Public Notice on June 17, 2004 soliciting comments from any interested parties. No comments were filed opposing the Petition. Under the FCC rules, the proposed redefinition would be deemed approved and effective within 90 days if the FCC did not act to initiate a proceeding. The FCC took no action to commence a proceeding, and as a result, the FCC's concurrence to the redefinition action was deemed approved effective September 15, 2004.

6. North Dakota Network Co., a wholly subsidiary of SRT Communications, Inc., followed a similar process in 2006. By order dated March 22, 2006 in Case No. PU-05-653, the Commission granted North Dakota Network ETC status conditioned upon the FCC's approval of redefined study areas under CFR Part 47 § 54.207(c).

II. Identification of Sagebrush.

7. Pursuant to Commission Rule 69-02-02-04(1), NDAC, Sagebrush states its name, address, telephone number, and designated contact person as follows:

Sagebrush Cellular, Inc.
P.O. Box 600
61 Hwy 13 S
Scobey, MT 59263-0600
Attn: Shawn Hanson
Phone #: (406) 783-2200
Fax #: (406) 783-5274

8. Sagebrush is a "telecommunications carrier" within the meaning of section 153 (44) of the Act, and is a "telecommunications company" within the meaning of N.D. Cent. Code § 49-21-01(19). Sagebrush is a CMRS common carrier licensed by the FCC to provide wireless personal communications service.

9. Sagebrush is a wholly owned subsidiary of Nemont Telephone Cooperative, Inc. ("Nemont"). Nemont is a "rural telephone company" within the meaning of section 153(37) of the Act. Nemont is designated as an eligible telecommunications carrier for the purpose of receiving federal universal service support in its study area, by order of the NDPSC in its case No. PU-424-97-430. Missouri Valley is also rural telephone company within the meaning of § 153(37) of the Act and is designated an eligible telecommunications carrier for the purpose of receiving universal service support by order of the NDPSC in case No. PU-2779-02-451. Missouri Valley is also a wholly owned subsidiary of Nemont. Nemont and Missouri Valley consent to and support Sagebrush's petition in this case. Exhibits 3 and 4, respectively. The Missouri Valley Exchange (Williston, ND) lies wholly within the NEMONT TEL COOP-ND study area.

10. Sagebrush currently provides PCS service in Northwest North Dakota within the Williston Exchange. Attached as Exhibit 5 is a map illustrating Sagebrush's current PCS coverage areas. Attached as Exhibit 6 is Sagebrush's proposed coverage following implementation of its build out.

11. Sagebrush serves over 10,000 subscribers in Montana and North Dakota and uses 62 towers in Montana in 2006. The vast majority of Sagebrush tower sites are wholly owned and operated by Sagebrush. Sagebrush intends to build out its licensed spectrum in Northwest North Dakota using its own facilities and some leased facilities..

III. Sagebrush Meets all the Requirements for Designation as an ETC.

12. Under 47 U.S.C. § 214(e)(2) and N.D. Cent. Code §§ 49-21-01.7(12), (13), and § 69-09-05-12, 69-09-05-12.1 of the North Dakota Administrative Code, the Commission has the authority to designate Sagebrush as an ETC in its requested designated areas. The requirements for ETC designation are set forth in 47 U.S.C. § 214(e)(1)-(2), 47 C.F.R. §54.101, and

incorporated by reference in N.D. Cent. Code § 49-21-01.8. Effective July 1, 2007, the Commission adopted rules in §§ 69-09-05-12, 69-09-05-12.1 of the North Dakota Administrative Code for designation of ETCs as well.

A. Sagebrush Meets 1996 Telecommunications Act Criteria as ETC.

As set forth more fully below, Sagebrush: (1) is a common carrier; (2) provides the supported services; and (3) will meet all service and advertising obligations of an ETC. In addition, in areas served by rural telephone companies, Sagebrush's designation as an additional ETC serves the public interest.

1. Sagebrush is a Common Carrier Providing Service Over Its Own Facilities.

13. The first requirement for ETC designation is that the applicant is a common carrier. 47 U.S.C. § 214(e)(1). As a personal communications service provider, Sagebrush is a "common carrier" under federal law. See 47 C.F.R. § 20.9(a)(7). Sagebrush is a Commercial Mobile Radio Service (CMRS) common carrier that uses federally licensed spectrum in compliance with applicable federal, Montana, and North Dakota statutes. Hanson at 6-7.

2. Sagebrush Offers All Supported Services and Functionalities.

14. The second federal requirement for ETC designation is that the applicant provides the services set forth in 47 C.F.R. § 54.101(a)(1)-(9) throughout the requested designated service areas. 47 U.S.C. § 214(e)(1)(A). Sagebrush is a facilities-based provider of telecommunications services to customers in Montana and North Dakota. Through its PCS offerings, Sagebrush will provide North Dakota subscribers all of the supported services specified in 47 C.F.R. § 54.101(a) throughout its designated service areas using its own facilities, or a combination of its own facilities and leased facilities. Sagebrush currently offers and is able to provide each of the services and functionalities identified by the FCC in 47 C.F.R. § 54.101(a)(1)-(9) as follows:

(a) **Voice-grade access to the public switched telephone network.** “Voice-grade access” means the ability to make and receive phone calls, within a frequency range of between 300 to 3000 Hertz. 47 C.F.R. § 54.101(a)(1). Through its interconnection arrangements with local telephone companies all North Dakota customers of Sagebrush are able to make and receive calls on the public switched telephone network within the FCC’s specified frequency range.

(b) **Local usage.** An ETC must include an amount of local usage minutes free of charge as part of a universal service offering. 47 C.F.R. § 54.101(a)(2). To date, the FCC has not quantified any minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue. *See Universal Service Further Notice of Proposed Rulemaking*, FCC 98-278 (Oct. 26, 1998) (“*October 1998 NPRM*”). Moreover, unlimited local usage is not required by any ETC. *In the Matter of Federal-State Joint Board on Universal Service*, CC 96-45, FCC 03-170, Order and Order on Reconsideration (rel. July 14, 2003) (“*July 2003 Order*”). Sagebrush already meets this requirement by including local usage in each offering to its customers. Sagebrush provides unlimited calling for calls originated within the Sagebrush home network to a called party within the Sagebrush home network. See Exhibit 7 detailing Sagebrush’s existing calling plans. In addition, Sagebrush will comply with any specific local usage requirements adopted by the FCC in the future and required of a federal ETC. Sagebrush will also ensure compliance with the local usage requirement through any cooperative resale arrangements as well. Hanson at 10, 21-22.

(c) **Dual-tone, multi-frequency (“DTMF”) signaling, or its functional equivalent.** DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. 47 C.F.R. §54.101(a)(3). Sagebrush provides DTMF signaling through its network to support efficient call set up. This is accomplished through Sagebrush Cellular’s

Nortel DMS 100 switch. Hanson at 8, 21-23.

(d) **Single-party service or its functional equivalent.** “Single-party service” means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line. 47 C.F.R. § 54.101(a)(4). The FCC’s regulation further states that a personal communications provider meets the requirement of offering single-party service when it offers a dedicated message path for the length of a user’s particular transmission. *Id.*; *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, FCC 97-157, Paragraph 162 (rel. May 7, 1997) (“*Universal Service Order*”). Sagebrush meets this requirement of single-party service by providing a dedicated message path for the duration of all customer calls. Single party service in the context of Sagebrush Cellular is provided through the network’s ability to allocate spectrum to establish a dedicated message path for the duration of a user’s call. Hanson at 9,1-3.

(e) **Access to emergency services.** The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Enhanced 911, or “E911”, which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), is only required if a public emergency service provider makes arrangements with the local provider for the delivery of such information. 47 C.F.R. § 54.101(a)(5). Sagebrush complies with current E911 requirement for CMRS providers. Hanson at 9, 4-6.

(f) **Access to operator services.** “Access to operator services” means any automatic or live assistance provided to a customer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Sagebrush meets this requirement by providing all of its customers with access to operator services provided by either itself or other entities. The Sagebrush network provides access to operator services through operator service

trunks extending from the Sagebrush mobile telephone switching office (MTSO) to the Nemont network. The Nemont network has established operator service trunks with Qwest to provide operator services on behalf of Sagebrush. A similar arrangement will be made for the North Dakota service area. Hanson at 9, 18-22.

(g) **Access to interexchange service.** An ETC must offer customers access to interexchange service for purposes of making and receiving interexchange calls. 47 C.F.R. § 54.101(a)(9). Equal access to interexchange service – i.e., the ability of a customer to access a presubscribed long distance carrier by dialing 1+ number – is not required. *July 2003 Order* at paragraphs 14-15. Sagebrush presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls. The Sagebrush network provides access to interexchange service primarily through Associated Network Partners, Inc. long distance. Customers may also utilize dialing arrangements (such as 800 numbers) to access alternative providers of interexchange service. Hanson at 10, 1-4.

(h) **Access to directory assistance.** “Access to directory assistance” means the ability to place a call directly to directory assistance. 47 C.F.R. § 54.101(a)(8). Sagebrush meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212”. Hanson at 10, 8-11.

(i) **Toll limitation for qualifying low-income consumers.** An ETC must offer either “toll control” or “toll blocking” services to qualifying Lifeline customers at no charge. The FCC no longer requires an ETC to provide both services as part of the toll limitation service required under 47 C.F.R. § 54.101(a)(9) if the carrier is incapable of providing both. *See Universal Service Fourth Order on Reconsideration*, FCC 97-420 (rel. Dec. 30, 1997). Sagebrush will make toll limitation service available for qualifying low-income consumers. This

will be accomplished by configuring a standard pre-translator in the Sagebrush switch to prohibit toll calls. Hanson at 10, 13-16.

Once designated as an ETC in the requested wire centers listed in Table 1, Sagebrush will continue to participate in Lifeline and Link-Up as required, and will provide a toll blocking service in satisfaction of this requirement.

3. Sagebrush will Offer and Advertise the Availability of Supported Services.

15. Sagebrush provides the supported services today within the requested designated areas illustrated on Exhibit 5 . Upon designation, Sagebrush will offer and provide the supported services within those areas consistent with the obligations of an ETC.

16. The third requirement for ETC designation requires an applicant advertise the availability of the supported services and charges using media of general distribution. 47 U.S.C. § 214(e)(1)(B). Sagebrush currently offers and advertises its services throughout its requested designated service areas using several different media, including newspaper, and radio advertising. Once designated, Sagebrush will advertise the availability of the supported services and charges therefore using media of general distribution, in accordance with the requirements of 47 C.F.R. § 54.201(d)(2). Additionally, Sagebrush will comply with all applicable provisions of N.D. Admin. Code § 69-09-05-12(6) relating to the content of advertising. Hanson at 11, 1-6.

IV. Sagebrush Will Comply with Service Area Requirements.

17. For areas served by a rural telephone company, Section 214(e)(5) of the Act provides that the ETC's designated service area must be that rural telephone company's study area. A rural telephone company's "study area" is generally defined as all of the company's existing certificated exchange areas in a given state. *Universal Service Order*,

paragraph 172 n.434.

18. Although the exchange of Missouri Valley is completely within the Sagebrush licensed spectrum (Missouri Valley exchange is completely within the NEMONT TEL COOP-ND study area) , the study area of NCC does not correspond with Sagebrush's PCS licensed area or existing signal coverage area. Thus, it is necessary in this proceeding for the Commission to redefine the service area requirement for NCC from the study area to the wire center level, pursuant to 47 C.F.R. § 54.207, to enable Sagebrush to meet the federal ETC requirements under 47 U.S.C. §214(e).

19. The Act and the FCC's regulations authorize the FCC and the Commission to act in concert to develop an alternative service area for a rural telephone company in accordance with 47 C.F.R. §54.207(c)-(d). The sole requirement in establishing a service area other than the study area is that the FCC and the State commission each give full consideration to the Joint Board's recommendations and explain their rationale for reaching a different conclusion. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Universal Service Order, paragraph 187.*

20. Sagebrush seeks conditional ETC designation in the study areas of its affiliate Nemont, and NCC. Exhibit 8 illustrates the expanded area within BTA 299 which is requested in this Application. The map attached as Exhibit 7 illustrates Sagebrush's current coverage areas in which ETC has previously been granted by the Montana Commission.

V. Designation of Sagebrush as an ETC in the State of North Dakota Serves the Public Interest.

21. For areas served by a rural telephone company, the Commission must find that designating an additional ETC serves the public interest in accordance with 47 U.S.C. § 214(e)(2). Sagebrush states that its designation in the areas served by Nemont, Missouri Valley and NCC will serve the public interest. As this Commission has previously concluded in its

orders granting ETC status to previous wireless companies seeking ETC status, e.g., North Dakota Network Co., the granting of an additional ETC is in the public interest because it will facilitate competition not only between landline and wireless service, but also competition among wireless services within the affected study area.

22. The Commission has determined that the public interest analysis under 47 U.S.C. § 214(e)(2) should balance increased benefits of competition against any proven detrimental impacts on the preservation and advancement of universal services. As an ETC, Sagebrush will be able to provide universal service on a more competitively neutral basis than is the case today. With access to universal service funding, Sagebrush can offer competitive services to North Dakota consumers on a more even-handed basis.

23. The use of federal universal support to provide universal services and extend wireless networks in rural areas of North Dakota clearly benefits the public interest by ensuring these networks will be available to deliver services to North Dakota consumers.

24. The benefits of increased competition can be expected to lead to better service and the provision of new, innovative services. Sagebrush will provide to consumers the benefits of mobility, larger local calling areas, and where requested by the PSAP, GPS location assistance for customers dialing 911.

25. Designation of Sagebrush as an ETC will serve the public interest because Sagebrush will provide all of the supported services required by the Commission, will participate in the Lifeline and Link-Up programs as required by the FCC's Rules, and will otherwise comply with all FCC Rules governing universal service programs, which are designed to ensure that the public interest standards of the Act are achieved. Allowing Sagebrush access to universal service subsidies will allow Sagebrush to continue to enhance and expand its network infrastructure to better serve consumers and to compete with other carriers on a level playing

field.

26. Sagebrush's designation will not adversely affect or otherwise threaten the provision of universal services by the rural telephone companies. Under the current funding mechanisms, rural telephone companies will continue to receive universal service support based on an embedded cost methodology, and will not lose support if they lose lines to a competitor.

VI. Sagebrush Complies and Will Comply with the New Rules Provided in §§ 69-09-05-12, 69-09-05-12.1 of the North Dakota Administrative Code.

27. Sagebrush complies with the newly enacted provisions for designation of an ETC found in §§ 69-09-05-12, 69-09-05-12.1 of the North Dakota Administrative Code ("ND Rules"). Because Sagebrush is not the incumbent local exchange, it identifies in Exhibit 2 the proposed designated area as required by ND Rules. The ND Rules require Sagebrush to explain how it meets the federal requirements for designation as an ETC. As set forth in paragraphs 13-25, and the testimony of Shawn Hanson, Sagebrush demonstrates it meets the requirements for designation as an ETC.

28. Sagebrush does not request waiver of any ETC requirement. ND Rules at § 69-09-05-12(2)(c).

29. The ND Rules require the ETC applicant to provide service within a "reasonable" period of time to customers within the designated service area but outside the network coverage area if services can be provided at a reasonable cost. ND Rules at § 69-09-05-12(3)(a).

Sagebrush is committed to reaching customers in the rural and insular regions of Northwest North Dakota and will endeavor to provide such wireless service in a substantial area of the designated region. Hanson at 3, 17-23.

30. Sagebrush's network is able to remain functional in emergency situations, as required by ND Rule § 69-09-05-12(3)(c). Existing Sagebrush towers are installed with

structural integrity designed to withstand severe wind and radial ice conditions. In addition, all tower sites are equipped with battery backup and a receptacle for use with portable generators. Hanson at 17, 11-16.

31. As set forth in the pre filed testimony of Shawn Hanson, and as required by ND Rule §69-09-05-12(3)(f) , Sagebrush acknowledges the Commission may require it to provide equal access to long-distance carriers in the event that no other ETC is providing equal access within the proposed designated service area. Sagebrush acknowledges the FCC may impose this duty as well. Hanson at 13, 18-21.

VII. Redefinition of Rural Telephone Company Service Areas.

32. Sagebrush's request for ETC designation is subject to the Commission's action to redefine the service area of NCC. As stated above, the Act and the FCC's rules provide that the service area of a rural telephone company shall be the "study area" of the rural telephone company, until and unless the FCC and the State commission both agree to redefine the service area. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b). 47 C.F.R. §54.207 provides the mechanism by which the FCC will process a request by a State commission for redefinition of a service area. The decision to redefine the service area must be made after taking into account recommendations of the Federal-State Joint Board. *Id.*

A. Service Area Redefinition is Consistent with Joint Board Standards

33. The FCC identified three factors initially recommended by the Joint-Board which should be considered by the Commission and the FCC when determining the appropriateness of redefining a rural telephone company's service area. The first factor is the risk of cream skimming. The FCC noted that if a competitor were required to serve a rural telephone company's entire study area, the risk of "cream-skimming" would be reduced because a competitive ETC would be prevented from selectively targeting service only to the lowest cost

exchange of the rural ILEC's study area. *Universal Service Order, paragraph 189*. As the Joint Board explained:

We note that some commenters argue that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize "cream skimming" by potential competitors. Potential "cream skimming" is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area.

In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, paragraph 172 (rel. Nov. 8, 1996) ("Joint Board Recommendations").

Sagebrush proposes to serve the entire area served by its affiliates Nemont, and Missouri Valley. In addition, Sagebrush proposes to serve all of the area within NCC's study area that is also within Sagebrush's licensed spectrum. NCC does not object to Sagebrush's application for ETC status for the wire centers located within their study areas and Sagebrush's licensed spectrum. Sagebrush intends to work cooperatively with resellers and others to jointly serve portions of the NCC study area that currently are underserved. Further, as explained by Hanson, cream skimming is not part of Sagebrush's strategy. A majority of customers within the proposed service areas are already customers of Sagebrush affiliates.

34. Second, a State commission and the FCC must consider the regulatory status enjoyed by rural telephone companies under the Act. The FCC determined that initially establishing a study area for a rural telephone company's service area was appropriate, at least temporarily, in recognition of the different treatment afforded to smaller rural telephone

companies which are exempt from certain of the Act's requirements. *Universal Service Order, paragraph 189*. In making its recommendation, the Joint Board had reasoned:

For example, rural telephone companies are initially exempt from the interconnection, unbundling, and resale requirements of 47 U.S.C. § 251(c). The 1996 Act continued this exemption until the relevant state commission finds, inter alia, that a request of a rural telephone company for interconnection, unbundling, or resale would not be unduly economically burdensome, would be technically feasible, and would be consistent with section 254. Moreover, while a state commission must designate other eligible carriers for non-rural areas, states may designate additional eligible carriers for areas served by a rural telephone company only upon a specific finding that such a designation is in the public interest.

Joint Board Recommendations, paragraph 173.

35. The third factor to be considered is whether any administrative burdens might result from the redefinition of the service area. A rural telephone company's universal service support payments are currently based on a rural company's embedded costs determined at the study area level. *Universal Service Order, paragraph 189*. The Joint Board initially expressed concern that rural telephone companies might have difficulty calculating costs on a less-than-study area level. The Joint Board stated:

Another reason to retain existing study areas is that it is consistent with our recommendation that the determination of the costs of providing universal service by a rural telephone company should be based, at least initially, on the Company's embedded costs. Rural telephone companies currently determine such costs at the study area level. We conclude, therefore, that it is reasonable to adopt the current study areas as the service areas for rural telephone companies rather than impose the administrative burden of requiring rural telephone companies to determine embedded costs on a basis other than study areas.

Joint Board Recommendations, paragraph 174.

36. Despite its initial decision to adopt the study area as the rural telephone

companies' service area, the FCC has now stated a policy favoring redefinition in instances where a rural carrier's study areas is large and/or non-contiguous. In response to issues raised by competitive ETC's and wireless carriers who might not be able to provide facilities-based service throughout a rural company's entire study area, the FCC has expressly urged State commissions to explore redefinition for purposes of ETC designations. The FCC cautioned that requiring a new entrant to serve a non-contiguous service area as a prerequisite to ETC eligibility would impose a "serious barrier to entry, particularly for wireless carriers" and would be "particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service". *Universal Service Order*, paragraph 190.

37. Sagebrush requests that the Commission redefine the service areas of NCC study area as set forth in Table 1 on an individual wire center basis for purposes of designating an ETC under 47 U.S.C. § 214(e). The study areas of NCC contain multiple wire centers which are either wholly or partially not located within the scope of Sagebrush's authorized service areas. The most logical and appropriate method of redefining this service area is by individual wire centers. Redefining this service area as such for purposes for ETC designations will promote competition by eliminating a barrier to entry into the universal services market. This approach also would enable Sagebrush to be designated a federal ETC in the wire center areas within its existing licensed and signal coverage area consistent with the public interest determination of the Commission.

38. The Commission can proceed to redefine the service areas as outlined above while appropriately taking into account the three factors noted by the Joint Board and adopted by the FCC. The first factor relating to a risk of cream skimming is not present. Sagebrush seeks redefinition of the rural telephone company service area on an individual wire center basis so it can be designated an ETC in those areas for which it is licensed and has the ability to provide

facilities-based wireless services. Redefinition on this basis will preserve and advance universal service by establishing designated service areas that are more reflective of the areas actually served. Redefinition furthers competition and protects the incumbents from selective targeting of specific areas with the lowest cost and highest support. Indeed, Sagebrush already serves the lowest cost exchange, Williston, and now seeks to expand its coverage to higher cost areas within its licensed spectrum area.. The present application for ETC status permits Sagebrush to serve more rural communities in Sagebrush's licensed area. In short, there will be no opportunity for cream skimming.

39. The second factor relating to the special status of rural LEC's can also appropriately be taken into account by redefining on a wire center basis. The redefinition of the rural telephone company service areas on this basis will not compromise or impair the unique treatment of NCC as a rural telephone company under Section 251(f) of the Act. Consequently, NCC will still retain the statutory exemptions from interconnection, unbundling and resale requirements under 47 U.S.C. § 251(c) even if its service areas are redefined for purposes of ETC designations.

40. The Act's public interest factor for the designation of an additional ETC in the service areas of NCC under 47 U.S.C. § 214(e)(2) will remain in place. The continued existence of the public interest standard was noted by the FCC as a safeguard available to a State commission to support a redefinition request for service areas on a less-than-study area level. *Universal Service Order, paragraph 190*. This public interest factor will remain as an effective check to prevent the designation of an additional competitive ETC who may seek to target only low cost areas or otherwise pose a detriment to the rural consumers of the incumbents. Thus, the incumbent LECs such as NCC will retain its unique status and special treatment as a rural telephone company under the Act consistent with the Joint Board's recommendations if its study

areas were redefined on a wire center basis.

41. The third and final Joint Board factor relating to the administrative ease of calculating the costs of the rural telephone companies on a less-than-study area level is likewise not an issue. There are no administrative costs to consider because any federal universal service support available to a competitive ETC in an areas served by NCC would be determined based on the per-line support available to the rural telephone company itself. 47 C.F.R. § 54.307(a).

42. Accordingly, the Commission should act to redefine the service areas of NCC on an individual wire center basis in order to foster competition and bring new telecommunications services to rural northwest North Dakota. Consistent with the factors articulated by the FCC based on the Joint Board's recommendations, the Commission should order redefinition of the affected NCC study area to a wire center basis.

B. Redefinition is Necessary to Promote Competition and Advance Universal Service.

43. The redefinition of the NCC's service area is necessary for the promotion of competition and the advancement of universal service. Unless the service area is redefined, Sagebrush is precluded from being designated as an ETC in any of NCC's rural telephone wire centers because Sagebrush cannot serve the entire study area. Redefinition is in the public interest because it will enable Sagebrush, to bring new services and new technologies to customers of North Dakota's rural telephone companies. Unless the Commission establishes a different definition of service area for NCC in this proceeding, NCC's wide ranging study area will pose an impenetrable barrier to entry for competing carriers. These large and non-contiguous study areas create a disincentive to competition. This type of barrier to entry was appropriately recognized by the Washington Utilities and Transportation Commission when it successfully applied to the FCC to redefine the study areas of rural LEC's in its State. The Washington

Commission noted: "The designation of the service area impacts the ease with which competition will come to rural areas.....the wider the service area defined by the state commission, the more daunting the task facing a potential competitor seeking to enter the market". *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas at the Exchange Level and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Washington Util. & Transp. Comm'n, Docket No. 970380, at 3 (Aug. 1998). The Washington Commission concluded that smaller service areas for the designation of ETC's in rural areas will promote competition and speed deregulation. *Id.* At 9.

44. The Commission has approved redefinition in the substantially similar case of North Dakota Network Company ("ND Network"). ND Network is a wholly owned affiliate of SRT Communications, Inc. SRT is a rural telecommunications company in north central North Dakota. ND Net applied for and was granted ETC status for the areas for which it holds licensed spectrum. Case No. PU-05-653. The Commission further agreed to redefine the study area for the rural companies within ND Net's licensed spectrum, finding that ND Net's application "would bring new services, new technologies, and a choice of universal service providers to customers of North Dakota's rural telephone companies." *Id.* at 8. Sagebrush's wireless offering will bring similar benefits to the customers of northwest North Dakota.

45. The FCC has previously determined that redefinition of rural telephone company service areas to the exchange or wire center basis facilitates local competition by enabling new providers to serve relatively small areas. *In the Matter of Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas of the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and Order, CC Docket No. 96-45,

DA 99-1844, paragraph 8 (rel. Sept. 9, 1999). The FCC noted: "We find that our concurrence with rural LEC petitioners' request for designation of their individual exchanges as service areas is warranted in order to promote competition". *Id.* The FCC concluded that Washington's "effort to facilitate local competition justified [the FCC's] concurrence with the proposed service area designation". *Id.*

46. The redefinition of the NCC listed service area to an individual wire center basis will foster competition in North Dakota. Redefining for purposes of determining ETC service areas will enable Sagebrush and other carriers to offer competitive universal services to the customers of these rural telephone companies. This fostering of competition comports with the goals of the Act and the FCC's directives. Accordingly, this Commission should order that the service areas should be redefined into service areas on an individual wire center basis.

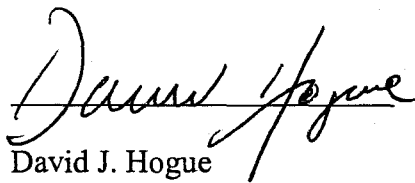
VIII. Conclusion

47. The Act, the North Dakota Administrative Code, and the North Dakota Century Code, establish clear, consistent and competitively fair mechanisms for allowing carriers, including a CMRS provider, to be designated as an ETC for the purpose of federal universal service support. Sagebrush has been designated an ETC in Montana since 2005. Sagebrush will continue to provide the supported services, satisfy all applicable requirements subject to the redefinition of the rural telephone company service areas, and meet the obligations of an ETC. Sagebrush's expanded designation will bring new technology, lower rates, and better service, and so is clearly in the public interest.

48. Sagebrush respectfully requests the Commission to follow the directives and principles of the Act and the new ND Rules and to grant its Application by issuing an order conditionally designating Sagebrush as an ETC pursuant to 47 U.S.C. § 214(e) in the service areas of Nemont, Missouri Valley, and NCC. Sagebrush is authorized to serve the entire service

area of Missouri Valley but not the entire service area of NCC. In order to effectuate the Commission's designation of Sagebrush as an ETC in the service area of NCC, the Commission should seek to redefine the service area of NCC to the individual wire center consistent with purposes of 47 C.F.R. § 54.207.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David J. Hogue", written over a horizontal line.

David J. Hogue
Pringle & Herigstad, PC
PO Box 1000
Minot, ND 58701-1000.
(701) 852-0381
Attorneys for Sagebrush Cellular

Dated: 13 Sep. 07

TABLE 1

Table 1 lists the study areas for which redefinition is requested from a study area level to an individual wire center level under 47 C.F.R. § 54.207(c) to the extent that Sagebrush Cellular, Inc. wireless service area does not cover the entirety of NCC's study area. Sagebrush does not request redefinition for the NEMONT TEL COOP-ND study area, reference number 382247.

Study Area	Wire Center
NCC Study Area Code 381625	Divide County
	Crosby
	Noonan
	Williams County
	Alamo
	Epping
	Grenora
	Marmon
	Mc Gregor
	Ray
	Round Praire
	Tioga
	Wildrose